

**BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI**

MISSOURI ASSOCIATION OF CLERKS,	)	
	)	
Petitioner,	)	
	)	
MISCELLANEOUS DRIVERS, HELPERS	)	
AND PUBLIC EMPLOYEES, UNION LOCAL	)	
NO. 610, A/W I.B.T.C.W.H.A.	)	
	)	
Intervenor,	)	
	)	
vs.	)	Public Case No. 81-004 "B"
	)	
21ST JUDICIAL CIRCUIT,	)	
STATE OF MISSOURI	)	
	)	
Respondent.	)	

**JURISDICTIONAL STATEMENT**

This case appears before the State Board of Mediation upon the Missouri Association of Clerks filing a petition for certification as public employee representative of certain personnel employed by the State of Missouri, working in the 21st Judicial Circuit located in St. Louis County. The Miscellaneous Drivers, Helpers and Public Employees Union, Local 610 filed a petition as an intervenor having a legitimate interest in the proceedings pursuant to Board Rule 8 CSR 40-2.130. On August 19, 1981, a hearing was held in Jefferson City, Missouri at which representatives of Local 610, the 21st Judicial Circuit and the State of Missouri were present. No one appeared on behalf of the Missouri Association of Clerks. The case was heard by State Board of Mediation Chairman Mary Gant, employer member Herbert Shaw and employee member Robert Missey. Because subsequent to the hearing employee member Misseys' term expired, the case was submitted by transcript to new employee member Charles Yaeger. The

State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining unit determinations by virtue of Section 105.525, RSMo 1979.

At the hearing the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

### **FINDINGS OF FACT**

The 21st Judicial Circuit is one of the 115 judicial circuits in the State of Missouri. Serving St. Louis County, the 21st Judicial Circuit accommodates one of the heaviest case loads in the state. There are twenty circuit judges and thirteen associate circuit judges assigned to the 21st Circuit. In addition to the judges, there are a number of employees who assist in the processing of litigation filed in the 21st Circuit. Among the support staff are those employees classified as clerks, ranging from Clerk I, the entry level position to Clerk V or Chief Clerk, the highest clerk position. There are approximately 237 clerks employed by the 21st Judicial Circuit.

The job description which sets out the duties of the clerks provides that their work involves filing legal documents, recording case identification data, typing, answering the telephone, and other general clerical duties. The education and experience requirements for the clerk positions include a high school education with general clerical experience, with the amount of experience and skill required increasing with each clerk level.

The terms and conditions of the clerk's employment is controlled at various levels throughout the judicial system. Article, V, Section 4(1) of the Missouri Constitution provides that the Supreme Court, shall have superintending control over the courts of Missouri. Thus the highest supervisory authority over the 21st Judicial Circuit and its employees resides with the Supreme Court.

In exercise of this authority the Supreme Court established a Circuit Court Personnel System. Known as Administrative Rule No. 7 (A.R. No. 7). The personnel system establishes operating procedures, job classifications and descriptions, guidelines concerning employee benefits and pay, and personnel policies regarding holidays and leave. Also, under the Court Reform and Revision Act of 1978 (House Bill 1634), the Supreme Court is designated the head of the judicial department for purposes of the budget procedure, impacting directly upon the funding of the 21st Judicial Circuit and other circuit courts. Section 476.265.2, RSMo 1979.

The Supreme Court, in an effort to effectively administer its responsibility in regards to budgeting and personnel matters, has established the Circuit Court Budget Committee which is responsible for making recommendations to the Supreme Court on developing annual budget requests for the circuit courts and administering the Circuit Court Personnel System.

As provided by Section 7.04.2 of A.R. No. 7, the Circuit Court Budget Committee's powers and duties include the power

- (a) To allocate state appropriations among the circuits for the funding of the Circuit Court Personnel System; to allocate job classes to appointing authorities; to review and recommend requests for additional personnel; to reclassify positions upon a change in position duties; and to review appeals resulting from actions of the Committee.
- (b) To make recommendations to the Supreme Court as to changes in the structure of the Circuit Court Personnel System as described in Section 7.01 of this Rule. All changes in the structure of the Circuit Court Personnel System require the prior approval of the Supreme Court.
- (c) To revise any of the individual parts of the Circuit Court Personnel System as those revisions relate to the addition, modification, or elimination of individual job descriptions; the adjustment of staffing guidelines; the amendment of personnel policies; and other necessary revisions provided such revisions do not change the structure of the Circuit Court Personnel System as described in Section 7.01 of this Rule.

The employees of the 21st Judicial Circuit are not only under the supervisory authority of the Circuit Court Budget Committee, but also are supervised by the presiding judge of the 21st Judicial Circuit. The presiding judge has, subject to the authority of the Supreme Court and the Chief Justice, general administrative authority over all judicial personnel and court officials in the circuit, including the authority to assign any judicial or court personnel employed in the circuit. Sec. 478.240.2, RSMo 1979. Also A.R. No. 7 provides that reclassification of existing personnel positions and classification of new positions require the approval of the presiding judge.

The circuit court en banc also has supervisory authority over the employees in question. Each circuit court budget must be approved by a majority of the members of the respective court en banc. Section 476.265.2, RSMo 1979. The circuit court en banc is considered the commission in charge of determining the propriety of a disciplinary action or dismissal involving a clerk (Section 483.245.3, RSMo 1979), and is empowered to remove a clerk for "cause". Section 483.245.4, RSMo 1979. The circuit court en banc is also authorized to establish the maximum number of clerks for each county and division. Section 483.245.5, RSMo 1979.

As could be expected, the individual judge under which each clerk works has considerable input into the day to day activities of a clerk in that Section 483.245.2, RSMo 1979 provides that all division clerks shall be appointed by the judge of the division the clerks serve, and such judge may remove from office any division clerk whom he appoints. Further, division clerks are, by statute, under the administrative control of the judge who appoints them. Section 483.241.2, RSMo 1979. Nevertheless, the appointing judge's authority is not absolute in that a judge appointing a clerk must have a specific position allocated to them before an appointment can be made. Section B.4.2, A.R. No. 7. The appointment must be to a job classification as determined by the

Circuit Court Budget Committee. The clerks rate of pay must be within the salary ranges assigned to specific job classification as established in A.R. No. 7, Section 7.01. D. 2.1. Clearly, each judge exercises wide discretion in the selection, assignment, and supervision of the clerks. However, such authority is subject to review and limitations established by the court en banc, presiding judge, and Supreme Court of Missouri through the Circuit Court Budget Committee.

Additional evidence was presented concerning the specific duties of those employees classified as Clerk V. Because of the Board's ruling in this case, it is unnecessary to consider such evidence at this time.

### **CONCLUSIONS OF LAW**

Local 610 has intervened to be certified as the public employee representative of a bargaining unit comprised of certain clerk personnel employed by the State of Missouri, working in the 21st Judicial Circuit located in St. Louis County, Missouri. The issues before the Board are (1) What public body must be considered the employer; (2) What constitutes an appropriate bargaining unit among the employees in question; and (3) Whether those employees designated as Clerk V are supervisory personnel to be excluded from the bargaining unit.

Local 610 contends that the 21st Judicial Circuit must be considered the employer with whom the public employer representative must meet and confer. On the other hand, it is also argued that the individual judges for whom the clerks work must be considered the employer because of the wide latitude the judges are afforded in hiring, assigning, and supervising the day-to-day work of the clerks. However, the record clearly indicates that the Supreme Court, through the Circuit Court Budget Committee, has overall supervisory power over all clerks employed throughout the state and thus must be considered the true employer.

The Supreme Court's authority is based on the Missouri Constitution, statutes, and administrative rules promulgated by the Supreme Court. The judicial department, headed by the Supreme Court, has assumed administrative control over the budgets under which each circuit must operate. Further, the Supreme Court, by virtue of the Circuit Court Budget Committee and A.R. No. 7, has established job classifications applicable to all clerks employed throughout the state. Also there has been established a general personnel system that sets out policies governing pay ranges, leaves, holidays and other terms and conditions of employment. Given the broad, centralized supervisory control exercised by the Supreme Court through the Circuit Court Budget Committee, the Board concludes that the judiciary is similar to a department within State Government and as such is considered the employer of the personnel in question.

The second issue before the Board involves the scope of the appropriate bargaining unit. That is, should the appropriate bargaining unit include only the clerks of the 21st Judicial Circuit or encompass all clerks throughout the state, or whether should there be a separate bargaining unit for each group of clerks working under a single judge. An appropriate unit is defined by Section 105.500 (1), RSMo 1979, as

"a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned."

Although Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest", certain factors must be considered in determining whether such a community of interest exists. Factors applicable to this case include similarities in pay, benefits, and type of work performed. An application of those factors to the facts of this case requires the Board to conclude that all clerks working within the judicial department share a community of interest.

At the outset, it is recognized that the clerks work at various locations throughout the state. Accordingly it cannot be argued that the clerks constitute a unit of employees working at a single "plant or installation" which establishes an identifiable community of interest. However, the clerks, as clerical employees, are in the same craft and serve nearly identical function for a public body, namely the judicial department.

As for the clerks similarities in pay and benefits, it is clear that all clerks employed by the state's judicial department work within a statewide personnel system. The Circuit Court Budget Committee has established procedures and policies which control many of the terms and conditions of employment of the clerks such as salary, benefits, leave policies, job classifications, and educational and experience requirements.

The Intervenor argues that the clerks of the 21st Judicial Circuit do not share a community of interest with other clerks employed throughout the state. In support of its argument, Local 610 points out that the 21st Judicial Circuit processes a much larger volume of litigation in comparison to other circuits; that the 21st Circuit is one of the few circuits with a non-partisan court employee system; and that the employees are subject to the supervisory authority of the circuit's presiding judge. Although these factors may somewhat distinguish the clerks working in the 21st Judicial Circuit from those of many other circuits, they are not sufficient to require a separate bargaining unit. The fact remains that all clerks throughout the state perform essentially the same function and are governed by the same policies and guidelines established by the Circuit Court Budget Committee.

Another factor that must be considered in determining the appropriate bargaining unit is the danger of proliferation of different bargaining units throughout the state, making unmanageable the number of representatives with whom the employer must meet and confer. If Local #610's argument were accepted, there could possibly exist 115 bargaining units with which the employer would have to meet and confer. Further, if

the Board recognized the clerks of each individual judge as constituting an appropriate bargaining unit, the number of units would be so great as to make impossible any meaningful employer-employee negotiations. Consequently, the Board concludes that the appropriate bargaining unit consists of all clerk personnel employed by the judicial department, excluding supervisors, in that all such employees share a community of interest that can be adequately protected by a statewide unit. Because there was insufficient testimony in the record to render a decision on the supervisory questions, it will not be addressed in this decision.

### **DECISION**

It is the decision of the State Board of Mediation that the employer is the judicial department of the State of Missouri. Further, the appropriate bargaining unit shall consist of all clerical employees, excluding supervisory personnel, employed by the judicial department. Because neither the petitioner nor the intervenor has submitted the necessary showing of interest as required by Board Rule 8 CSR 40-2.030 (I), in the appropriate unit, the Board will grant an additional 60 days, from the decision date below, for the parties to secure the necessary showing of interest. Failing to do so the petition will hereby be dismissed.

MISSOURI STATE BOARD OF MEDIATION

(S E A L)

/s/ Mary L. Gant  
Mary L. Gant, Chairman

/s/ Herbert Shaw  
Herbert Shaw, Employer Member

/s/ Charles Yaeger  
Charles J. Yaeger, Employee Member